

## Federal Acquisition Regulation

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42328, Sept. 19, 1983, unless otherwise noted.

### 32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This includes—

(a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;

(b) Loan guarantees, advance payments, and progress payments based on costs;

(c) Administration of debts to the Government arising out of contracts;

(d) Contract funding, including the use of contract clauses limiting costs or funds;

(e) Assignment of claims to aid in private financing;

(f) Selected payment clauses;

(g) Financing of purchases of commercial items;

(h) Performance-based payments; and

(i) Electronic funds transfer payments.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 49710, Sept. 26, 1995; 61 FR 45772, Aug. 29, 1996]

### 32.001 Definitions.

*Contract action*, as used in this part, means an action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

*Customary contract financing* means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without

specific reviews or approvals by higher management.

*Unusual contract financing* means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

[52 FR 30077, Aug. 12, 1987, as amended at 60 FR 49710, Sept. 26, 1995]

#### **32.002 Applicability of subparts.**

(a) The following sections and subparts of this part are applicable to all purchases subject to part 32:

- (1) Sections 32.000 through 32.005.
- (2) Subpart 32.3, Loan Guarantees for Defense Production.
- (3) Subpart 32.6, Contract Debts.
- (4) Subpart 32.7, Contract Funding.
- (5) Subpart 32.8, Assignment of Claims.
- (6) Subpart 32.9, Prompt Payment.
- (7) Subpart 32.11, Electronic Funds Transfer.

(b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than part 12:

- (1) Subpart 32.1, Non-Commercial Item Purchase Financing.
- (2) Subpart 32.4, Advance Payments For Non-Commercial Items.
- (3) Subpart 32.5, Progress Payments Based on Costs.
- (4) Subpart 32.10, Performance-Based Payments.

[60 FR 49710, Sept. 26, 1995, as amended at 61 FR 45772, Aug. 29, 1996]

#### **32.003 Simplified acquisition procedures financing.**

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of part 13.

[60 FR 49710, Sept. 26, 1995]

#### **32.004 Contract performance in foreign countries.**

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

[60 FR 49710, Sept. 26, 1995]

#### **32.005 Consideration for contract financing.**

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either

(1) A bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or

(2) Contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.